

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**AMIR HAKIM MCCAIN a/k/a
JOHN MCCAIN,**

Plaintiff

v.

JOHN E. WETZEL, et al.,

Defendants

:
: **Civ. No. 1:12-cv-0789**
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: **Judge Rambo**
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: **Magistrate Judge Schwab**
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MEMORANDUM

Before the court is a report and recommendation filed by the magistrate judge (Doc. 319) in which she recommends that Defendant Thomas Roegner's motion for partial summary judgment as to McCain's First Amendment retaliation claim be granted.

The report and recommendation was filed on February 29, 2016. Objections to the report and recommendation were due on March 17, 2016. On March 14, 2016, McCain filed a motion for an extension of time to file objections. (Doc. 322.) By order dated March 14, 2014, McCain was granted an extension to March 31, 2016. (Doc. 323.) On April 12, 2016, McCain filed another motion for an extension of time to file objections. (Doc. 326.) In that motion, McCain claims he has not had sufficient time in the prison library to do research in order to file his objections.

The motion for an extension of time will not be granted. The motion should have been filed before the deadline of March 31, 2016. In addition, McCain

does not need a law library to respond to the report and recommendation. The issue presented in the motion for partial summary judgment is that McCain did not exhaust his available administrative remedies in accordance with DC-ADM 804 on the retaliation issue. All McCain needs to do is present documents that support his contention that he did exhaust his administrative remedies. He has not cited or produced any record evidence in support of his claim of exhaustion. His need to use the prison library is not essential in proving that he did exhaust.

The report and recommendation addressed the exhaustion issue in detail. The magistrate judge addressed the vague assertion that McCain was “under imminent danger” and therefore was excused from filing administrative remedies. (Doc. 319, pp. 13-14.) She also addressed McCain’s claim that he filed a private criminal complaint against Roegner and wrote letters to staff members or the office of professional responsibility. Neither complies with DC-ADM 804.

This court finds that the undisputed evidence demonstrates that McCain has not exhausted his administrative remedies with regard to his retaliation claim.

An appropriate order will issue.

s/Sylvia H. Rambo
United States District Judge

Dated: April 19, 2016